IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2598 OF 2004

Mr. Abdulla Ali Mohammed Faia ...Applicant
Vs.
Ms.Abida Anwar Hussain & Anr. ...Respondents

WITH

CRIMINAL APPLICATION NO.1973 OF 2005

Abida D/o.Anwar Hussain ...Applicant
Vs.
Mr. Abdulla Ali Mohmmed Faia & Anr. ...Respondents

Shri. A.G. Damle i/by Prachi A. Nimbalkar for the Applicant.
Ms. S.D. Shinde A.P.P. for the Respondents.

CORAM : A. S. OKA, J.
DATED : JULY 08, 2005.

P.C.:

1. On 06th July, 2005 the learned Counsel appearing for the parties were heard in support of the Writ Petition and in support of the Criminal Application No.1973 of 2005. Both the Writ Petition and Criminal Application arise out of an application filed by the Respondent No.1 in the Writ Petition under section 3(1)(2) of the Muslim Women(Protection of Rights on Divorce) Act,1986(hereinafter referred to as the said Act of 1986). For the sake of convenience, the parties are referred to with reference to their status in the Writ Petition.

2. After the contest of the said application by the Petitioner, the learned Metropolitan Magistrate, 10th Court, Andheri allowed the said application and directed the Petitioner to pay a sum of Rs.5,00,000/-

as fair and reasonable amount of maintenance as contemplated by the said Act of 1986 within a period of one month. The Petitioner was also directed to pay a sum of Rs.10,000/- to the Respondent No.1 by way of costs of the proceedings. The Writ Petition takes exception to the said order. In the Writ Petition, a Criminal Application No.1973 of 2005 is filed by the Respondent No.1 for directions. The first direction sought is to direct the Petitioner in the Writ Petition to deposit the sum of Rs.5,10,000/- in this Court. The second direction is for enhancement of the compensation awarded by the learned Magistrate. Though the Application made by the Respondent No.1-wife for enhancement is strictly speaking not maintainable as it is neither an application under section 482 of the Code of Criminal Procedure , 1973 nor a Writ Petition under Article 227 of the Constitution of India, considering the fact that the application is filed by wife in the proceeding under the said Act of 1986, I have considered the merits of the submissions made by the learned Counsel appearing for the Respondent No.1-wife in support of the claim for enhancement of amount of compensation awarded by the learned Magistrate.

3. The learned Counsel for the Petitioner submitted that the learned Magistrate has not at all

considered the financial status of the Petitioner. He submitted that perusal of the reasoning given by the learned Magistrate show that no reasons are assigned for arriving at the figure of Rs.5,00,000/- as a fair and reasonable compensation. The learned Counsel submitted that the amount of Rs.5,00,000/- has been aribitrarily fixed by treating a sum of Rs.2,000/- per month as fair and reasonable maintenance. He submitted that the learned Magistrate calculated the remuneration received by the Petitioner in Indian currency without taking into consideration the fact that the Petitioner is required to maintain other family members. He submitted that compensation of Rs.5,00,000/- has been fixed arbitarily.

4. The learned Counsel appearing for the Respondent No.1 submitted that admittedly the Petitioner-husband is working at Kuwait and earning salary which is equivalent to Rs.1,10,000/- per month. He submitted that considering such a large amount of salary, the compensation amount cannot be only Rs.5,00,000/- and according to him reasonable amount is Rs.50,000,000/-.

5. I have considered the rival submissions. The Petitioner-huband stepped into witness-box . During examination-in-chief he has deposed only about the

grant of divorce and payment of Rs.15,000/- by him to the Respondent No.1 after giving talaq. In the deposition, the Petitioner has not specifically stated regarding the requirement of maintaining the other members of the family. In the cross-examination he admitted that the salary which he is getting in Kuwait is equivalent to Rs.1,10,000/- per month.

6. The Respondent No.1 deposed that the Petitioner was drawing salary of Rs.2,50,000/- per month in Kuwait. Her case is that the talaq was given on 9th February, 2002. Iddat period expired on 22nd May, 2002. She stated that she observed Iddat during that period and she lived with her parents during the said period. She denied suggestion given during the cross-examination that she has not observed Iddat as she was taking tution classes.

7. While considering admitted income of the Petitioner, it must be borne in mind that the Petitioner is getting the said income in a foreign country in foreign currency. In my view, the compensation cannot be calculated by adopting a straight jacket formula of converting the income which the Petitioner is getting in foreign currency into Indian currency as the Petitioner is required to spend amount consistent with the cost of living in the said

country.

8. The learned Magistrate has referred to the locality in which the Respondent No.1 is residing. The learned Magistrate has also considered the quantum of meher and status of the Petitioner and the Respondent No.1. The learned Magistrate has adopted a broad formula for the purposes of ensuring that the Respondent No.1 will get a sum of Rs.2,000/- per month. Taking the rate of interest at 5 per cent per annum, the learned Magistrae has broadly calculated the figure of Rs.5,00,000/-. It cannot be said that the compensation amount Rs.5,00,000/- is fixed arbitrarily after having considered the status of the parties, the age of the Respondent No.1 at the time of grant of talaq and the expectancy of life of 70 years. Considering the income of the Petitioner and status of the parties and considering the evidence on record, it cannot be said that order passed by the learned Magistrate of fixing the compensation amount of Rs.5,00,000/- is perverse. The learned Magistrate has passed the order after considering the evidence and all the relevant factors which are required to be considered. The claim made by the Respondent No.1 in the sum of Rs.50,00,000/- is obviously an exaggerated claim. In my view, the compensation amount fixed by the learned Judge is just, fair and reasonable and no

interference is called for.

9. Accordingly, Writ Petition is dismissed.

10. Criminal Application No.1973 of 2005 is also accordingly dismissed.

11. The Respondent No.1 will be entitled to withdraw a sum of Rs.2,10,000/- deposited by the Petitioner in this Court.

12. At this stage, Shri. Damle, learned Counsel appearing for the Petitioner prays that sufficiently long time may be granted to deposit balance amount in compliance with the impugned order. The said prayer is opposed by the learned Counsel appearing for the Respondents. Considering the fact that the Petitioner has deposited a sum of Rs.2,10,000/- in this Court, time of six weeks from today is granted to the Petitioner to deposit the balance amount.

13. Parties to act upon an authenticated copy of this order.

JUDGE